IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.100 of 1999
Date of decision:28.10.2006

The Commissioner of Income Tax, Ludhiana

....Petitioner

versus

M/s. Sona Woollen Mills (P) Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

Mr. Rakesh Bakshi, Advocate for Mr. SK Mukhi, Advocate, for the respondent.

JUDGMENT:

Following question has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 8.8.1997 in ITA No.102/Chd/94, for the assessment year 1989-90:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the CIT(A) allowing depreciation as per income-tax Rules to the assessee for computing the quantum of income under section 115-J primarily on the ground that the same was based on the views expressed by the then Chairman of the CBDT in a departmental publication?"

The assessee declared its income nil for the assessment year 1989-90. It calculated its income after claiming depreciation as per provisions of the Income Tax Act, 1961 (for short, 'the Act'), which was rejected by the Assessing Officer on the ground that depreciation for

purposes of Section 115-J of the Act was permissible as per Schedule XIV of the Companies Act, 1956. The CIT(A) allowed the claim of the assessee holding that depreciation provided under the Companies Act was the minimum but there was no bar to higher depreciation being claimed by the assessee and, thus, for purposes of Section 115-J of the Act, depreciation actually debited could be allowed. The Tribunal upheld the said view.

We have heard learned counsel for the parties.

Learned counsel for the assessee has relied upon judgment of the Hon'ble Supreme Court in **Apollo Tyres Limited v. Commissioner of Income Tax,** (2002) 255 ITR 273, wherein, it was observed that words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" were used for limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. The Assessing Officer could not re-scrutinise the accounts to see whether the same were in accordance with the provisions of the Companies Act. Income acceptable to the authorities under the Companies Act has to be treated as income for purposes of Section 115-J of the Act. Only power of the Assessing Officer is to see that accounts are certified by the authorities under the Companies Act and, there is no jurisdiction to go behind the net profit shown in the profit and loss account.

We find that the Kerala High Court in **CIT v. Dynamic Orthopedics P. Limited,** (2002) 257 ITR 446, has taken the view that for purposes of Section 115-J of the Act, depreciation could not be calculated as per provisions of the Income Tax Rules. Similar view has been taken by the Madhya Pradesh High Court in **CIT v. Vandana Rolling Mills Limited,** (1998) 234 ITR 693, Kerala High Court in **CIT v. Malayala Manorama Company Limited,** (2002) 253 ITR 378. The Gujarat High Court in **Dy.Commissioner of Income tax(Asstt.) v. Vardhman Fabrics P. Limited,** (2002) 254 ITR 431 upheld the view taken by the Tribunal that the Circular of the Company Law Board laid down only minimum depreciation for purposes of distribution of the dividend and the Company could decide to give higher depreciation.

In view of judgment of the Hon'ble Supreme Court, view taken by the Madhya Pradesh High Court and Kerala High Court cannot be preferred. We, accordingly, answer the question against the revenue and in

favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 28, 2006 (Rajesh Bindal)
'gs' Judge